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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,480

08/01/2003

Dan Pharo

6404

7590

10/20/2004

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EXAMINER

SMITH, RICHARD A

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,480

Applicant(s)

PHARO ET AL.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 22-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 31 and 32 are objected to because of the following informalities:

Claim 31: As written, it appears that each of the path forming members comprises a plurality of small discrete path forming elements wherein previously each discrete path forming element was renamed as a path forming member. Is this the applicant's intent?

Claim 32: It appears that --placing-- should be added to the beginning of subparagraph g).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 and 22-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1:

- a. Lines 3-5 of the preamble, lines 3-11 of subparagraph b), lines 7-12 of subparagraph c), and subparagraph e) make the claim language confusing because the Applicant has stated that

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intended uses of “guiding . . . while advancing toward an end of a line position so that they may reach a destination in advance of that end of the line position.” The preamble and the subparagraphs involve similar phrasing. For example, the movement direction indicated by the movement indicator elements is along the substrate toward the end of the line element which appears to imply that people will follow the substrate from the end not marked to the end marked with the end of the line element. This being the case, then how can the destination of subparagraph e) be in advance of the end of line indicator. This implies that the destination lies before the end of line indicator on the substrate and would interrupt the movement of people along the substrate. Furthermore, there is no drawing showing this embodiment. Therefore, this phrasing appears contradictory to the Examiner since it appears that the destination would be the end of the line or pathway, or would be past the end of the line and the end of line element and not in advance thereof.

b. Subparagraph e) is confusing because throughout the remainder of the claim “a destination” has been used consistently in the form of intended use; however, in these subparagraph “said destination” is not consistent with respect to the others and appears to claim the combination of the end of line element in combination with the destination.

Claims 22 and 32 state phrases that are also confusing for the reasons as noted for claim 1 a. above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-4, 6, 7, 22-24, 26-28, 30, and 32 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,637,378 to Hensler et al. in view of U.S. 5,775,016 to Chien and U.S. 3,453,660 to Gehweiler et al.

Hensler et al. teaches a floor mat (ground cover substrate) with an upper surface and borders (path forming guidance elements 16 and 18) for indicating a path therebetween. The substrate having path forming guidance elements associated with the an upper surface thereon to form parallel pathway boundaries in a desired orientation, said upper surface of said substrate being relatively free of elements that would obstruct the prominence of the pathway, said pathway being visibly prominent, the path forming guidance members being arranged to be

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visible in low and high light conditions, the pathway being visibly prominent and of a carpeting material.

Hensler et al. does not teach an end of line element being an elongated element with indicia, said end of line element being associated with the substrate and the path forming guidance members each being a pair of discrete path forming members associated with the upper surface of the substrate, being on opposite sides of said substrate and perpendicular to the end of line element and being in a pair of rows, the sufficiently narrow width of the pathway with respect to the group and that of a car, means associated with said end of line element and small discrete path forming members for locating same with the cover substrate, a plurality of movement indicator elements on said pathway of movement between the spaced apart pathway boundaries and being presented in such manner to depict the direction of movement in that pathway, said movement indicator elements cooperating with the path forming members to present a desired pathway and a direction of movement to an end of a line position and to a destination in advance of that end of the line position, the means for locating comprises a fastening means associated with the underside of the end of line element and with the underside of the path forming members, the end of the line element and the path forming members are fitted into recesses formed in the ground cover substrate for holding same and have surfaces at the surfaces of the substrate, the end of the line element and the path forming members are formed integrally in said substrate and appear at the upper surface of the substrate, the discrete members and elongate member and the pathway defined thereby being sufficiently low to said ground surface that they do not constitute barriers to individuals with ambulatory disabilities or in wheelchairs, the end of the line element is located on a substrate which is spaced slightly apart

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from an end of the other substrates to represent an end of the line position, but which is cooperatively located with respect to such other substrates to identify an end of the pathway.

Gehweiler et al. teaches that it is known and desirable in the prior art to replace painted marking lines with rows of circular die cut indicating members to mark aisles and crosswalks in factories, warehouses, etc. (column 1, lines 24-37). The indicating members are secured by a fastening means comprising an adhesive on the underside of the elements, which is temporarily covered by a removable liner.

Chien, in figure 17, teaches that it is known to include elongated elements, i.e., exit signs 59, on a ground surface. Each of the signs 59 includes directional information in the form of an arrow and indicia. The arrows being a plurality of movement indicator elements located in the middle of the pathway boundaries, i.e., the walls for the hallway or the side edges of the hallway substrate, i.e., flooring, and are presented to depict the direction of movement in that pathway to an end of a line position, i.e., the doorway to the stairwell, to a destination, i.e., outside. The substrate being relatively free of elements that would obstruct the prominence of the end of line indicator and the plurality of movement indicator elements. Chien also discloses (column 5, lines 25-30) that the floor can be provided with recesses (see figure 2 versus figure 1) to accommodate the elongated elements while allowing the elements to be viewed from the upper surface of the ground cover substrate and that the system and elements can be applied to conform to any environment as necessary to guide people as desired, e.g. figures 5, 6, 10, 16 and 17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by replacing or adding to the guidance element borders thereof the die cut members (either elongated or circular), since Gehweiler et al. teaches that die

cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. and to allow retrofitting of previously made substrates in order to save costs and in order to allow the user more selection in the type of substrate desired. With respect to the path forming guidance members each being a pair of discrete path forming members associated with the upper surface of the substrate and being in a pair of rows, these features would be inherent in the system, taught by Hensler et al., which creates an aisle as modified by the guidance members used by Gehweiler et al. to form the aisles.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including one or more of the ground signs of Chien on the substrate thereof, for the purpose of indicating the position of an exit relative to the substrate. Such a modification would result in the guidance members extending from a location proximate the ends of the sign(s) from Chien and generally perpendicular to the end of the line element. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al., by providing recesses for insertion of the elements and members, as taught by Chien, and to place the elements, members and system according to the environment with the movement indicators, as suggested by Chien, in order to prevent a user from tripping over the elements and members as they walk along the substrates of the personnel guidance and location control system, to make traversing easier for people with ambulatory disabilities or in wheelchairs, to adjust the system, elements and members to the environment in which it is to be used for proper guidance of pedestrians when needed, and to provide the correct direction of movement.

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With respect to the width of the pathway being sufficiently narrow and being less than a width of a vehicle: the limitations regarding the width are only considered to be the "optimum" value of the width of the pathway disclosed by Hensler et al., as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the application, including homes, offices, factories, airplanes and to accommodate spaces, hallways and doorways, as suggested by Hensler et al. See In re Boesch, 205 USPQ 215 (CCPA 1980).

With respect to the elements and members being integrally formed in the substrate: it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 177 USPQ 326, 328 (CCPA 1973). Therefore, the recessing, as taught by Chien, and the adhesive attachment to the substrate, as taught by Gehweiler et al. appear to meet this limitation as claimed.

With respect to Claim 30, i.e., the end of the line element is located on a substrate which is spaced slightly apart from an end of the other substrates to represent an end of the line position, but which is cooperatively located with respect to such other substrates to identify an end of the pathway: It is very well known that substrates can be laid according to the needs or desires of the supplier or user in order (1) to draw attention to a change, or (2) to span a distance wherein the substrates are not of the correct length to fully span the distance where the ends of said substrates abut. Furthermore, Chien also discloses that discrete systems and components can be combined and located in many forms and locations to convey the necessary guidance information as shown in figures 5-10, 16 and 17. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to separate the substrate having the

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end of line element based on preferences or needs of a user, as suggested by Chien. In this case (1) to draw a user's attention to a substrate having a different message from those preceding said substrate, or (2) to span a distance that does not fit the lengths of the substrates used.

With respect to the intended uses, i.e., Claim 1 - for defining an end of a line of the group of walking pedestrian individuals and representing a waiting location on said upper surface for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line in an orderly and successive manner; so that the individuals desiring to reach a destination will automatically enter the pathway of movement in an orderly manner; so that individuals in the pathway will not be inclined to walk in front of an individual who precedes them providing for an orderly movement of the individuals to a destination in advance of the end of the pathway, so that there is no crowding of individuals at or around that destination; presenting a desired pattern to enable the orderly and controlled movement of a group of walking pedestrian individuals into one or more lines of same to a destination; Claim 22 - for defining an end of a line of the group of pedestrian individuals and representing a waiting location for the individual at the front end of the group of pedestrian individuals in the line and where each of the individuals may wait their turn at the elongate member until they are ready to be received at the destination, so that the individuals may proceed to the destination in advance of the front end of the line in an orderly and successive manner, the pathway boundaries defining the boundaries of movement to the side for each of the individuals in the group allowing each of the individuals to await their turn in the pathway to reach the end of the line position and then leave that end of the line position for the destination in advance of but in proximity to the end of the line position, the discrete members thereby presenting a desired pattern to enable the

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orderly and controlled movement of a group of pedestrian individuals into one or more lines of same to a destination; Claim 28 - for optimum placement of the group of pedestrian individuals to maximize optimum use of space and to avoid pedestrian traffic congestion and which substrate, elements and members can be relocated to another position pursuant to need therefor: these intended uses have not been given any patentable weight since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not sufficiently differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

The Applicant should note that the preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With respect to claims 1 and 22 and subparagraph g) in each: The use of "whereby" makes what follows a functional limitation, and thus, does not have sufficient patentable weight because it has been held that the functional "whereby" statement does not define any structure and accordingly can not serve to distinguish. In re Mason, 114 USPQ 127, 44 CCPA 937 (1957). Furthermore, Hensler et al. as modified by Chien and Gehweiler et al., would be a complete and self-contained system, as discussed above.

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With respect to the method claim 32: the method steps, including a complete and self-contained system, will be met during the normal operation of the system disclosed by Hensler et al. as modified by Chien and Gehweiler et al., as discussed above.

6. Claims 5, 25 and 31 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. in view of Chien and Gehweiler et al. as applied to claims 1-4, 6, 7, 22-24, 26-28, 30 and 32 above, and further in view of Phillips.

Hensler et al., Chien and Gehweiler et al. together teach all that is claimed, as discussed in the above rejection of claims 1-4, 6, 7, 22-24, 26-28, 30 and 32 except for the elongate element and discrete path forming members being fastened to the mat by downwardly projecting screws and each path forming member comprising a plurality of discrete path forming elements.

Phillips teaches tactile members attached to a ground surface by screws wherein the combination of the tactile members and the screw are the plurality of discrete elements that form each of said path forming members.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Hensler et al. by utilizing the discrete elements of the die cut members and the screws wherein the screws secure the die cut members to the mat, since Phillips teaches that screws are a known means for securing indicators to a supporting surface, such as wood or linoleum.

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7. Claim 8 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. in view of Chien and Gehweiler et al. as applied to claims 1-4, 6, 7, 22-24, 26-28, 30 and 32 above, and further in view of applicant's admitted prior art.

Hensler et al., Chien and Gehweiler et al. together teach all that is claimed, as discussed in the above rejection of claims 1-4, 6, 7, 22-24, 26-28, 30 and 32, except for the end of the line element and the path forming members being painted onto the mat.

In the specification, applicant has admitted that it is known to paint guidance information on a substrate.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Hensler et al. by utilizing paint to create the end of line element and the path forming members, since painting is an old and well known means for quickly and inexpensively creating directional information and the like.

8. Claims 9 and 29 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al., Chien and Gehweiler et al. as applied to claims 1-4, 6, 7, 22-24, 26-28, 30 and 32 above, and further in view of U.S. 2,680,698 to Schnee.

Hensler et al., Chien and Gehweiler et al. together teach all that is claimed, as discussed in the above rejection of claims 1-4, 6, 7, 22-24, 26-28, 30 and 32 except for means is associated with each of said substrates enabling said substrates to be arranged relative to one another with an end of one substrate abutted against or closely spaced to an end of a next adjacent substrate to form a desired orientation for that pathway and to remain in the desired pattern orientation, said

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ground cover substrates have end margins on said substrates so that one substrate is capable of being arranged in abutting relationship with another substrate to form a desired pattern to thereby generate a selected pathway.

Schnee discloses a plurality of ground cover substrates arranged to form a pedestrian pathway, means associated with each of said substrates enabling said substrates to be arranged relative to one another, each of said substrates capable of being arranged with one or more other substrate in any of a variety of desired patterns, at least one of said ground cover substrates (1) being linear and having relatively straight longitudinal margins, at least one having an arcuately shaped portion (figure 2), said plurality of ground cover substrates having interlocking end margins. Schnee teaches that such is advantageous for permitting a large covering to be easily manufactured and to allow the mats to accommodate corners and obstructions. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system, taught by Hensler et al., Chien and Gehweiler et al., by making the system comprised of a plurality of ground cover substrates with the features, as taught by Schnee, since Schnee teaches that such is advantageous for permitting a large covering to be easily manufactured and to allow the mats to accommodate corners and obstructions.

Double Patenting

9. With the amendments submitted on August 2, 2004 for application 09/758,934, on August 20, 2004 for application 10/635,871 and on July 16, 2004 for my application 10/633,480 the

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applicant has modified the independent claims to be similar enough that a potential double patenting between the independent claims and a few the dependent claims of each of these applications is now potentially a problem. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Response to Arguments

10. Applicant's arguments filed July 16, 2004 have been fully considered but they are not persuasive.

With respect to the 112 rejection: The examiner has read and considered the applicant's response but it still appears to the examiner that the claim language does not state what is argued and explained in the arguments. The examiner has rephrased the 112 rejection in order to help clarify the problem.

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With respect to the interview for this application and Supervisory Examiner Diego Gutierrez, the applicant should note that Mr. Gutierrez did not attend this interview nor any of the other two interviews held on either February 19th or the 20th.

There were three interviews that I participated in, 10/633,480 being my application and 10/635,871 being Examiner Courson's application held on February 19th, and 09/758,934 being Examiner Guadalupe's application held on February 20th.

With respect to the interview and the inclusion of footprints being potentially allowable: Am unaware of any statement to that effect being made. If true then it would have been included in the interview summary. Nor do I recall hearing any such statement from Examiner Courson or Examiner Guadalupe during their interviews.

After Examiner Guadalupe had finished her interview I did state that a thought had occurred to me and that was the use of the indicia on the end of the line element stating 'wait here' might be a good point to distinguish the applications from the prior art. For the applicant's applications, the use of 'wait here' did have specific criticality and would require that the specification specifically clarify the meaning. The Applicant would need to provide arguments to clarify the distinction from other forms that might state or imply wait here, e.g. stop, and that the changes to the claims would be subject to further search and/or consideration.

Lastly, the applicant should note that there is no "footprints" disclosed in the claims, the claims are drawn to "a plurality of movement indicator elements."

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. As a sidebar, the applicant should note that it appears to the examiner that the independent apparatus claims 1 and 22 are now so replete with intended use statements intermixed with limitations that it is becoming increasingly hard to draw a clear distinction that is readily and easily understandable in the applied rejections to clarify the structure of the apparatus. In the three interviews that I participated in, 10/633,480 being my application and 10/635,871 being Examiner Courson's application held on February 19th, and 09/758,934 being Examiner Guadalupe's application held on February 20th, all three of us kept indicating that the arguments

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and much of the claims presented addressed intended use or intended use advantages and did not address structural limitations that distinguish the structural limitations of the claims from the prior art made of record and relied upon for the rejections applied. After the end of last interview which was conducted by Examiner Guadalupe and to which I sat in, I summarized by stating that all three of us had a similar problem with respect to the structure versus intended uses of the apparatus claims. It would be helpful if the applicant could clarify the structural limitations from the intended uses. If this is not clear then the applicant is welcomed to call and I'll try to clarify further.

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related systems.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', with a long, sweeping horizontal stroke extending to the right.

R. Alexander Smith
Examiner
Technology Center 2800

RAS
October 18, 2004